

R. A. MALESICH

IBLA 73-285

Decided October 3, 1973

Appeal from a decision of the District Office, Dillon, Montana, Bureau of Land Management, dividing a disputed area between applicants for conflicting grazing leases.

Vacated and remanded.

Grazing Leases: Applications! ! Grazing Leases: Apportionment of
Lands

Where two applicants for grazing leases whose predecessors in interest or who themselves have held contiguous grazing leases on federal lands for many years submit conflicting applications for additional portions of lands contained in each of the other's historical leaseholds, the division of the lands will be made on the basis of historical use in the absence of a more compelling basis for a different division, and each applicant will be awarded the land contained in the prior leases.

APPEARANCES: R. A. Malesich, Dillon, Montana, pro se; Robert H. Walsh, Twin Bridges, Montana, pro se.

OPINION BY MR. STUEBING

R. A. Malesich has appealed from a January 12, 1973, decision by the District Manager, Bureau of Land Management (BLM), Dillon, Montana, dividing an area of BLM grazing land between grazing lease applicants who had each applied for the same area.

Before this dispute arose each of the applicants or his predecessor in interest had held contiguous grazing leases on BLM land for many years.

On September 8, 1972, Malesich submitted an application for a preference right grazing lease pursuant to section 15 of the Taylor Grazing Act, 43 U.S.C. § 315(m) (1970). He had acquired his preference right lands from one R. A. Lasich, who had formerly leased most of the BLM lands contained in Malesich's application. Apparently, Malesich had intended to apply only for those lands which Lasich had leased, but he was encouraged by the District Office of the BLM in Dillon to apply for some additional land. Unfortunately, these additional lands had long been leased to Robert H. Walsh. As Malesich has pointed out in his appeal, this naturally made Walsh unhappy. In apparent retaliation, Walsh then applied for the lands in Malesich's application. Ultimately, the District Manager granted a lease to both applicants to graze in common. From that decision, Malesich has appealed.

Malesich has argued that this solution is unworkable since it would create more problems than it would solve. For instance, different breeds of cattle would be intermixed and additional fencing would be required.

Ordinarily, this Board is very reluctant to disturb decisions of the District Manager in cases of this nature. Thomas W. Dixon, 10 IBLA 19 (1973). But in this case we believe that the appellant's request that both he and Walsh be restored to their historical leaseholds not only reflects sound common sense, but also is in accord with the law. Among the factors to be considered by the District Manager in dividing preference right lands is historical use. 43 CFR 4121.2-2(d)(2). In the absence of other, more compelling reasons for a different disposition of the lands, we believe that the District Manager's decision should be vacated and both parties restored to their respective former leaseholds. See Vern A. Venable, 9 IBLA 294 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded to the District Office for disposition consistent with the views expressed herein.

Edward W. Stuebing
Member

We concur:

Martin Ritvo
Member

Newton Frishberg
Chairman

